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REMARKS

Claims 1-20 remain pending in the application. Claim 14 has been amended without introduction of new matter. Favorable reconsideration is respectfully requested in view of the above amendments and the following remarks.

Claim 14 has been amended merely to correct a typographical error that has been detected. In particular, the word "ration" has been changed to correctly read "ratio". No new matter has been introduced by this amendment, nor has the scope of the claim been narrowed in any way.

Claims 1-20 stand rejected under 35 USC §102(e) as allegedly being anticipated by Hou et al., U.S. Patent Number 6,901,051 (hereinafter Hou). This rejection is respectfully traversed.

To facilitate an appreciation of why the variously claimed embodiments are patentably distinguishable over the prior art of record, it is important to understand that a fundamental purpose of the variously claimed embodiments is to provide users of communications equipment with an indication of the level of network performance that they are likely to experience. As explained in the Background section, signal strength indicators have been used for this purpose in conventional systems. However, signal strength alone is not necessarily a good indicator of expected network performance because it fails to take into account factors such as network loading conditions.

The various embodiments claimed in this application address this problem by providing a mechanism in which the network is capable of deriving a better estimate of data throughput that will be experienced by a device by using not only a parameter supplied by that device but also network service measurement data. In claim 1, this is defined as "a server in communication with the service measurement database, wherein the server estimates a data throughput for a device that is in communication with the network *based on the network service measurement data and a parameter received from the device that is in communication with the network.*" (Emphasis added.)

In independent method claim 11, this is defined as "receiving a first parameter from a communications device that is in communication with a computing device; receiving a second parameter from a service measurement database; calculating the relative network throughput *based on the first and second parameters.*" (Emphasis added.)

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In independent apparatus claim 20, this is defined as "means for receiving a first parameter from a communications device that is in communication with a computing device; means for receiving a second parameter from a service measurement database; means for calculating a network throughput *based on the first and second parameters.*" (Emphasis added.)

It is well-established that "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). In the present instance, the Office has failed to establish a *prima facie* case under 35 U.S.C. §102 at least because the Hou patent neither discloses nor suggests claim 1's "estimat[ing] a data throughput for a device that is in communication with the network *based on the network service measurement data and a parameter received from the device that is in communication with the network;*" claim 11's "receiving a first parameter from a communications device that is in communication with a computing device; receiving a second parameter from a service measurement database; [and] calculating the relative network throughput *based on the first and second parameters;*" or claim 20's "means for receiving a first parameter from a communications device that is in communication with a computing device; means for receiving a second parameter from a service measurement database; means for calculating a network throughput *based on the first and second parameters.*" (Emphasis added.) Instead, Hou discloses a system that relies exclusively on network service measurements.

With respect to this feature, the Office supports its rejection by arguing that the claimed feature "is met by the teaching of Hou that the performance measurements and generation are performed on the server side using network performance metrics stored in the metric generators and the data packets transferred between a source [i.e. a client system] and a computing device [i.e. the metric servers] which constitutes a connection and which meets a parameter received from the device in communication with the network."

Applicant respectfully disagrees. Nowhere does Hou describe extracting any parameter from the received packets, and using such parameter in combination with network-generated measurements to arrive at relative network throughput. Rather, Hou describes the network measuring the received packets, which at best corresponds to Applicant's claimed

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“network service measurement data”. The portions of Hou relied on by the Office in this aspect of the Action do not support the Office’s argument:

- Hou, at column 4, lines 4-55, merely describes how the metrics servers measure network traffic, and how they may be “generic” servers, or alternatively dedicated metrics servers. This section also describes that the generated performance metrics include “path bandwidth, throughput, goodput, packet loss rate, and round trip delay.”
- Hou, at column 4, line 65 through column 5, line 3, merely defines “throughput measurement” as being “a measurement of the total amount of data transferred from a specific computing device such as metrics server 17B to another specific computing device such as client system 11A through a particular connection between the two devices and measured over a predetermined time interval.”
- Hou, at column 9, lines 8-16, merely describes how the performance metrics measurements do not include traffic detected after a measurement time interval.
- Hou, at column 11, line 47 through column 12, line 3, presents a textual description of the block diagram illustrated in Hou’s Figure 5. This diagram includes a memory 87, processor 83, and network interface device 81 coupled by means of a path 85. The text merely explains that data packets are received and stored in the memory 87, and that the processor 83 is configured to generate the performance metrics based on the packets stored in the memory buffer 87.
- Hou’s Figure 1 merely illustrates a block diagram of an abstract model of a network having a measurement infrastructure in accordance with Hou’s teachings.

It is evident that Hou’s system generates its performance metrics based exclusively on network server measurements. Therefore, independent claims 1, 11, and 20 are patentably distinguishable over the Hou patent at least because Hou fails to disclose a server estimating data throughput based on network service measurement data *and* a parameter received from the device that is in communication with the network.

The dependent claims 2-4, 9, 12-15, and 18-19 are patentably distinguishable over the Hou patent at least for the same reasons as set forth above, and additionally because of the additional novel and nonobvious features that they define. For example, claim 14 defines the method of claim 11, “wherein receiving a first parameter includes receiving one of a received signal strength (RSS), a signal-to-interference ratio (SIR), a primary serving site, a sector,

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and a carrier." Each of these parameters relates to an aspect of the communications device. Not only does Hou fail to disclose this feature, but Hou does not even mention a client being a communications device, and accordingly would not be expected to mention these particular types of parameters.

The Office supports its rejection of claim 14 by arguing that "Hou teaches a method, wherein receiving a first parameter includes receiving one of a received signal strength (RSS), a signal-to-interference ratio (SIR), a primary serving site, a sector and a carrier (see column 8, lines 43-52)." With all due respect, Applicant has studied Hou's column 8, lines 43-52 and is unable to find any mention of the claimed features. Instead, this portion of Hou merely defines what a "connection number" and a "connection" are:

The connection number calculated in step 145 uniquely identifies a specific connection for the data packet. A connection is referred to as a logical or physical communication path to be traversed or traversed by the data packet from one computing device, a source, to another computing device, a destination. In one embodiment, one of the computing devices is a metrics server. Hence, the address information in the data packet which provides source and destination information similarly defines a connection for the data packet.

Applicant is unable to ascertain how this text relates to the feature defined by claim 14.

For at least the foregoing reasons, claims 1-4, 9, 11-15, and 18-20 are believed to be patentably distinguishable over the Hou patent. Accordingly, it is respectfully requested that the rejection of these claims under 35 U.S.C. §102(e) be withdrawn.

Claims 5-8, 10, 16, and 17 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Hou as applied to claims 1, 11, and 20. This rejection is respectfully traversed.

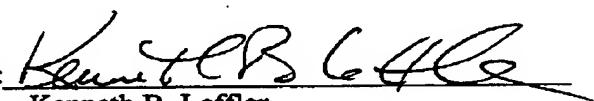
Claims 5-8, 10, 16, and 17 variously depend from independent claims 1 and 11, and are therefore patentably distinguishable over the Hou patent for at least the reasons set forth above with respect to those base claims. Accordingly, it is respectfully requested that the rejection of these claims under 35 U.S.C. §103(a) be withdrawn.

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The application is believed to be in condition for allowance. Prompt notice of same is respectfully requested.

Respectfully submitted,
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